

different operator inputs. Neither Yamato or Collect Hematology teach or suggest adjusting or creating different reagent mixtures in response to different operator inputs.

Kabata likewise does not teach or suggest adjusting or modifying the reagent to correspond to each of a plurality of different operator inputs, as recited in claims 27-35. Kabata's suggestion to adapt the commercially-available software for human blood so that it may be better used for research purposes in connection with animal blood concerns changing the histogram thresholds to accommodate animal (rabbit), as opposed to human cell types. The thresholds divide the cell populations on the histograms, and they cannot be changed on the systems identified (see, for example, Figure 2 of Kabata showing the thresholds in solid lines).

Kabata suggests that the software might be adapted for research purposes to adjust the histogram thresholds to better accommodate the animal cell types tested. The "Technicon H1" software identified by Kabata similarly modified the histogram thresholds for rats and dogs, but did not require different reagent mixtures for the different species. Accordingly, Kabata makes no teaching or suggestion of adjusting or creating different reagent mixtures in response to different operator inputs, as recited in claims 27-35, and thus Kabata does not teach or suggest modification of either Yamamoto or Collect Hematology to achieve this purpose.

Taylor discusses various staining techniques for flow cytometry, but does not suggest adjusting or creating different

reagent mixtures. Accordingly, Taylor does not materially add to the teachings of Yamamoto, Collect Hematology and Kabata with respect to the present invention.

It is therefore respectfully submitted that claims 27-35 are unobvious over either Yamamoto or Collect Hematology in view of Kabata and Taylor, for at least these reasons.

Claims 27-35 also stand rejected under 35 U.S.C. § 103 as being unpatentable over Yamamoto in view of Carver '725. In addition, claims 27-35 stand rejected under 35 U.S.C. § 103 as being unpatentable over Collect Hematology in view of Carver '725. The Examiner's grounds for rejection are hereinafter traversed and reconsideration is respectfully requested.

As discussed above, neither Yamamoto nor Collect Hematology teach or suggest adjusting or creating different reagent mixture in response to different operator inputs, as recited in the pending claims.

Although Carver '725 teaches that the reagent mixture may be optimized for each animal species whose blood is to be analyzed, under the teachings of Yamamoto and/or Collect Hematology, once the reagent mixture is optimized for each species of interest (as taught by Carver '725), one of ordinary skill in the pertinent art would have been instructed to analyze each such species using the reagent-mixture for that species only. There is no teaching or suggestion in the prior art references of record of adjusting a reagent mixture to correspond to different operator inputs. Accordingly, Carver '725 does not

materially add to the teachings of Yamamoto and Collect Hematology with respect to the present invention.

In any event, a petition is being filed herewith correcting the inventorship of this application to name Edward L. Carver, Jr. as the sole inventor of the invention as recited in the presently pending claims. (Authorization has been given in the amendment transmittal filed herewith to charge Deposit Account Number 11-0231 for the \$130.00 petition fee.) Accordingly, Carver '725 does not qualify as prior art under 35 U.S.C. 102 with respect to the present application.

It is therefore respectfully submitted that claims 27-35 are unobvious over either Yamamoto or Collect Hematology in view of Carver '725, for at least these reasons. Applicant respectfully requests that this rejection be withdrawn.

Claims 27-35 have been rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements. In response, independent claims 27 and 35 have been amended. Accordingly, reconsideration of the rejection of claims 27-35 under 35 U.S.C. 112, second paragraph, is respectfully requested.

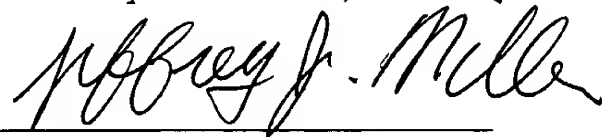
Claim 35 has been rejected under the judicially created doctrine of obvious-type double patenting in view of claims 11 - 14 of U.S. Patent No. 5,728,351. A terminal disclaimer to obviate this double patenting rejection is submitted herewith.

Accordingly, it is respectfully submitted that claims 27-35 are in condition for allowance. An early action to that effect is earnestly solicited.

If an additional fee, or any deficiency in fees paid,  
is required, authorization is hereby given to charge our deposit  
account no. 11-0231.

Respectfully submitted,

By



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